



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0446; FRL- 9765-6]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Determination of Clean Data for the 1987 PM₁₀ Standard for the Ogden Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a determination that the Ogden City nonattainment area in Utah is currently attaining the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) based on certified, quality-assured ambient air monitoring data for the years 2009 through 2011. The State of Utah submitted a letter dated March 30, 2000, requesting EPA to make a clean data determination for the nonattainment area of Ogden City. Given our determination that the Ogden City nonattainment area is currently attaining the PM₁₀ NAAQS, EPA is also determining that Utah's obligation to make submissions to meet certain Clean Air Act (CAA) requirements related to attainment of the NAAQS is not applicable for as long as the Ogden City nonattainment area continues to attain the NAAQS. This action is being taken under the CAA.

DATES: This final rule is effective on **[insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0446. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Freeman, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6602, freeman.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials AQS mean or refer to EPA's Air Quality System database.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials NAAQS mean or refer to National Ambient Air Quality Standard.
- (v) The initials PM₁₀ mean or refer to particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (coarse particulate matter).
- (vi) The initials RACM mean or refer to reasonably available control measures.

- (vii) The initials RFP mean or refer to reasonable further progress.
- (viii) The initials SIP mean or refer to State Implementation Plan.
- (ix) The words State or Utah mean the State of Utah, unless the context indicates otherwise.
- (x) The initials UDEQ mean or refer to Utah Department of Environmental Quality.

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I. EPA's Proposed Action

On July 30, 2012, EPA proposed to find that the Ogden City nonattainment area is currently attaining the 24-hour PM₁₀ NAAQS based on certified and quality-assured data from the most recent three-year period, 2009 through 2011, and to suspend certain CAA requirements related to attainment for so long as the area continues to attain the standard. See 77 FR 44544; (July 30, 2012).

To summarize our proposed rule, we described the 24-hour PM₁₀ NAAQS, which is 150 micrograms per cubic meter (µg/m³), and reviewed the designation and classification of the Ogden City nonattainment area for that standard. We then discussed how EPA makes attainment determinations for PM₁₀ and indicated that the 24-hour PM₁₀ NAAQS is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at the monitoring site within the nonattainment area. See 40 CFR part 50, appendix K.

We described Utah Department of Environmental Quality's (UDEQ's) one PM₁₀ monitoring site in the Ogden City nonattainment area. We noted that UDEQ has certified the data it submits to EPA's Air Quality System (AQS) database as quality-assured.

Next, we reviewed the ambient PM₁₀ data collected at the monitor site in the Ogden City nonattainment area for the most recent three-year period, 2009 through 2011. We concluded that the area is attaining the PM₁₀ standard because the expected number of exceedances per year for 2009 through 2011 for the Ogden City nonattainment area was equal to 1.0. For additional information on the PM₁₀ NAAQS, the designation and classification of the Ogden City nonattainment area, the monitoring site, and the data we relied on for our clean data determination, please see 77 FR 44544.

In conjunction with, and based on, our proposed determination that the Ogden City nonattainment area is currently attaining the PM₁₀ NAAQS, EPA proposed to determine that Utah's obligation to submit revisions to the Utah State Implementation Plan (SIP) to meet the following CAA requirements is not applicable for so long as the Ogden City nonattainment area continues to attain the PM₁₀ standard: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the reasonably available control measure (RACM) requirements of section 189(a)(1)(C); the reasonable further progress (RFP) requirements of section 189(c); and the attainment demonstration, RACM, RFP, and contingency measure requirements of part D, subpart 1 contained in section 172. We proposed to suspend these SIP requirements based on application of the Clean Data Policy to the Ogden City nonattainment area. In doing so, we noted that our application of the Clean Data Policy to the Ogden City nonattainment area is consistent with a number of actions we have taken for other PM₁₀ nonattainment areas that we also determined were attaining the NAAQS. For a detailed

explanation of our Clean Data Policy and its application to the Ogden City nonattainment area, please see 77 FR 44544.

II. Response to Comments

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments from the public.

III. EPA Action

No comments were submitted to change our assessment of the 2009 through 2011 ambient PM₁₀ data collected in the Ogden City nonattainment area and related finding that the area is attaining the NAAQS, or our application of the Clean Data Policy as described in our proposed action. Therefore, EPA is finalizing its determination that the Ogden City nonattainment area in Utah is currently attaining the NAAQS for PM₁₀.

EPA is also taking final action to determine that Utah's obligation to make SIP submissions to meet the following CAA requirements is not applicable for as long as the Ogden City nonattainment area continues to attain the PM₁₀ NAAQS: The part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the RACM requirements of section 189(a)(1)(C); the RFP requirements of section 189(c); and the attainment demonstration, RACM, RFP, and contingency measure requirements of part D, subpart 1 contained in section 172.

This final action does not constitute a redesignation to attainment under CAA section 107(d)(3) because Utah has not submitted a maintenance plan and EPA has not approved such a plan for the Ogden City nonattainment area as meeting the requirements of section 175A of the CAA, nor has EPA determined that Utah has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains moderate nonattainment for

the Ogden City nonattainment area until such time as EPA determines that Utah has met the CAA requirements for redesignating the Ogden City nonattainment area to attainment.

IV. Statutory and Executive Order Reviews

With this action, we are making a determination regarding attainment of the PM₁₀ NAAQS based on air quality data and, based on this determination, suspending certain Federal requirements. Therefore, this action would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249; November 9, 2000), because the determinations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule

does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 17, 2012.

James B. Martin,
Regional Administrator,
Region 8.

[FR Doc. 2012-31560 Filed 01/04/2013 at 8:45 am; Publication Date: 01/07/2013]